

JOSE RODRIGUEZ

IBLA 80-279

Decided August 18, 1980

Appeal from decision of the California State Office, Bureau of Land Management, canceling airport lease LA 063030.

Affirmed.

1. Act of May 24, 1928--Airports--Public Lands: Leases and Permits

An airport lease issued under the Act of May 24, 1928, is properly canceled where the lessee fails to use the leased land as a public airport. It is irrelevant that the lessee has been unable to arrange financing for reinitiation of airport service, as the terms of the Act, regulations, and lease require that the lands be used as an airport and provide for no dispensation of this requirement.

APPEARANCES: Jose Rodriguez, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On November 30, 1979, the California State Office, Bureau of Land Management (BLM), issued a decision canceling airport lease LA 063030, covering the facility known as the Giant Rock Airport. Jose Rodriguez, one of the present holders of the lease, appealed this decision to this Board.

The history of the lease is lengthy and has several unusual and even bizarre aspects. The lands in question are an excellent "natural" airport, being a decomposed granite dry lake bed, flat and ideally suited for a landing strip. The strip is located near an enormous, seven-story rock, appropriately dubbed Giant Rock. Prior to World War II, Giant Rock was the headquarters of a reclusive miner/pro prospector named Frank Critzer. Apparently, during the war, Critzer

came under suspicion of being a Nazi spy, and, as local legend has it, blew himself up when local authorities came to Giant Rock to arrest him in 1942. Prior to his violent exit from this world, Critzer evidently excavated two large "rooms" in or beneath Giant Rock in which he lived.

After the war, George Wellington Van Tassel, apparently Critzer's friend and successor in interest to his mining claims, became interested in Giant Rock, and, on April 24, 1946, he applied to lease the surrounding lands for development of an airport there. The Civil Aeronautics Administration (CAA) (now FAA) supported Van Tassel's application, noting that the site was well suited for and had a history of such use, and that it would be desirable to establish an airport there, as the surrounding area is desolate and as there was no other facility for 20 miles.

Accordingly, on December 15, 1947, BLM issued airport lease LA 063030 to Van Tassel for a term of 20 years under the Act of May 24, 1928, as amended, 49 U.S.C. §§ 211-213 (1976), for approximately 640 acres. On March 8, 1952, the lease was amended to include approximately 2,560 acres, all terms and the expiration date remaining the same.

The record shows that Van Tassel established a small commercial airport facility at Giant Rock, selling fuel to airplanes landing there and operating a snack bar. Van Tassel's annual reports of proceeds from these endeavors indicate that the airport did a small but steadily increasing business. The record indicates that many private and military flights set down there during the postwar period, apparently because the location of the airport was convenient to cross-country aviators who fell short of reaching the West coast and needed to land in the desert.

The first suggestion in the record that the airport was anything but ordinary came in April 1953, when a local BLM official precipitously canceled the lease, stating that Van Tassel was not using the lands as an airport, but as homesites, in violation of the lease terms. The report from the field investigator which led to this decision is not in the record, but it appears that BLM was responding to newspaper articles describing meetings at the Giant Rock airport of the "Brotherhood of the Cosmic Christ," later known as the "College of Universal Wisdom." These articles describe meetings of this "strange sect" who "claim they talk regularly with beings from unseen realms" who visit Earth on "flying saucers," and identify Van Tassel as the leader and founder of this "mystic cult." One of these articles states that "a dozen or more members are building homes among the surrounding volcanic rocks," and refers to a convention of flying saucer enthusiasts planned at Giant Rock in April 1953.

There is some doubt about whether there was any attempt to use the leased lands for homesites for Van Tassel's followers. 1/ Van Tassel's belief in the existence of flying saucers and his assertions that he had communicated with them are evident, as are his theories of "the influence of the A plus and B minus lines of light force active in all living things" and of "revitalization" by use of a "primary energy field" produced by an enormous device known as the "Universal Integraton," which was housed in a large dome-shaped structure. Apparently, Van Tassel asserted that these theories had been communicated to him by these "beings from unseen realms." 2/

On appeal to the BLM directorate in October 1956, the cancellation of Van Tassel's lease was overturned. The decision held that the area was not being used for homesites and that Van Tassel was running a legitimate airport at Giant Rock, which pursuit was not detrimentally affected by his personal beliefs. The lease continued in effect and was used annually between 1953 and 1970 as a convention site for believers in flying saucers, with as many as 15,000 people reportedly gathering there.

The lease was renewed in 1967, and BLM adopted a Federal Aviation Administration (FAA) recommendation that the size of the lease be reduced to 640 acres, as one of the runways there had been closed. Van Tassel accepted a 20-year renewal under these terms, and it is this lease which is in question here.

1/ Van Tassel may have urged his friends to locate homes on a privately-owned tract adjacent to the leased property southwest of Giant Rock. One individual, Raymond York, did construct a substantial residence on the lease, probably with Van Tassel's approval. However, after the decision to cancel the lease in 1953, Van Tassel disclaimed having given such approval, asserting that he had not authorized York to build a residence there, but had only agreed to allow him to build a temporary shelter in which York could live while working at the airport. York subsequently curtailed his employment there but continued to assert control over the home as his residence. BLM apparently instituted trespass charges against York, but the record does not indicate what happened to this action or to the structure there.

2/ The Integraton apparently has actually been partially constructed on the privately-owned lands southwest of Giant Rock. It is housed in a round building, 58 feet in diameter, with a dome 38 feet tall, and is described in College of Universal Wisdom literature as "an electrostatic magnetic generator for basic research into rejuvenation." The purpose of constructing it is "to be able to charge the bodies of our elderly people like batteries, giving them the energy of their youth." The idea for the Integraton was assertedly given to Van Tassel by "Solgonda," one of the aforementioned visitors from an unseen realm, in August 1953.

In April 1973, FAA reported that the Giant Rock airport was "active." The record also contains documents pertaining to several attempts by Van Tassel to sell his interest in the lease, apparently unsuccessfully. On May 10, 1976, BLM approved an assignment of the lease from Van Tassel to Phyllis and John Brady. ^{3/} On July 14, 1977, BLM approved another assignment of the lease from them to Jose F. Rodriguez and Doris H. Holmes, the present lessees.

On March 25, 1978, a BLM employee visited Giant Rock to inspect the airport and found that all fixtures and equipment from the airport facility had been sold. He was advised by Ken Hushes, Rodriguez' caretaker at the airport, that Rodriguez had closed the runway there by marking it with large "X's" in order to discourage aircraft from landing there. Hushes explained that Rodriguez was bankrupt and could not operate the airport and that he was attempting to sell it.

On July 27, 1978, Rodriguez filed a copy of an extensive report with BLM. He had apparently sent this report to many agents as part of an attempt to "sell" the lease property. This report discussed how one might make money from aviation-related activities at Giant Rock, such as operating the airport, as well as sky diving, gliding, ballooning, air shows, hang gliding, and aircraft auctions. It also suggested that the lands could be used commercially for such nonaviation purposes as motorcycle and dune buggy racing, drag racing, and rock concerts.

In March 1979, one Jim Navajo Velasquez purported to claim the leased lands under the "Heritage Act" and to designate them as an "Indian sacred site" for "worshipping," and apparently informed

^{3/} Van Tassel's assignment of the airport lease interest did not end the efforts of the College of Universal Wisdom to develop the Integraton. The College continued to solicit contributions for construction even after Van Tassel's death in 1978 under the leadership of his widow, Dorris Van Tassel. However, in June 1979, control of the Integraton and the land on which it is situated was apparently assumed by a new management, which renamed the College the "International Church of Christology Corporation," or simply "Christology Church." The principals in this new management are Archbishop John L. Pope, International President, and the Rev. Dr. Jim Navajo Velasquez, D.D., International Secretary, who had earlier unsuccessfully attempted to claim the airport for "worshipping." (See below.) This new management has requested that contributions be sent to save the Integraton and urges contributors not to make the checks payable to anyone but the Church, that is, not to Dorris Van Tassel. There is apparently a dispute between Dorris Van Tassel and the asserted new leaders as to control of the Integraton, but, as the matter is not before us, we make no comment on the question and set out these facts strictly to complete the history of Van Tassel's project.

several people that he was the "owner" of these lands, including the Giant Rock airport. BLM has apparently advised Velasquez that his claim is not valid. As discussed above at n. 3, Velasquez has also asserted ownership over privately-owned lands once connected with Van Tassel's "Integraton" project. We make no comment on these questions as they are not before us and as we are without jurisdiction to adjudicate disputes between individuals concerning interests in private property.

In September 1979, BLM again visited Giant Rock. Photographs taken at that time show that the buildings there were mere shells and reveal no sign of a functioning airport.

On October 4, 1979, BLM's Riverside District Manager reported to the State Director, BLM, that FAA had listed the airport as "closed until further notice" at the request of Rodriguez in April 1978, and that the facility had been abandoned. On October 15, 1979, BLM issued an order to Rodriguez and Holmes to show cause why the lease should not be canceled in accordance with section 3(c) of the lease and 43 CFR 2911.1-2(c), owing to their failure to devote the lands under lease to use as an airport.

On October 30, 1979, Rodriguez responded, but he failed to refute the charges that the airport was not in use as required by the lease and regulations. Rather, he simply asserted that he was attempting to sell the property and requested BLM's advice on how to develop it satisfactorily. On November 30, 1979, BLM issued a decision canceling the lease on account of the failure to use the premises as an airport as required. Rodriguez (appellant) filed a notice of appeal of this decision, asserting that he has invested considerable time and money in acquiring and trying to promote the airport. He states that strong growth in the area dictates the need for another private airport, but says that due to prevailing economic conditions it has been impossible to obtain funds for renovation and improvement.

[1] The record is clear that no airport has been operated on the leased lands since March 1978 at the latest, and appellant has made no attempt to refute this fact. Section 3(c) of the lease provides that "if the lessee shall fail to use the premises or any part thereof, * * * the lessor, in its discretion, may terminate and cancel this lease." This term is consistent with both the statute, 49 U.S.C. § 212(b) (1976), which provides that the lessee shall provide such facilities as are necessary to make the lands available for public use as an airport, and the regulation, 43 CFR 2911.1-2(c), which provides that BLM may cancel an airport lease if the lessee fails to use the leased premises. Accordingly, it was proper for BLM to cancel this lease.

It is irrelevant that appellant could not obtain financing to operate the airport or that he was attempting to assign the lease.

The lessee of an airport lease is required to make the leased lands available to the public as an airport, and no dispensation of this requirement is contemplated. Appellant has had over 2 years to reinitiate service at Giant Rock airport and has failed to do so.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Joan B. Thompson
Administrative Judge

